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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ALSUP, JUDGE

DREAMSTIME.COM, LLC,)
)
Plaintiff,)
)
VS.) NO. C 18-01910 WHA
)
GOOGLE, LLC,)
) San Francisco, California
Defendant.)
)
)

Wednesday, November 27, 2019

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

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For Defendant:

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BY: DYLAN J. LIDDIARD, ESQ.
LAUREN G. WHITE, ESQ.

Reported By: **BELLE BALL, CSR 8785, CRR, RDR**
Official Reporter, U.S. District Court

(Appearances continued, next page)

APPEARANCES, CONTINUED:

For Third Party Getty Images U.S. Inc.:
DAVIS WRIGHT TREMAINE LLP
505 Montgomery Street
Suite 800
San Francisco, California 94111
BY: KELLY M. GORTON, ESQ.

Also Present:

ANDREW KRAMER

1 Wednesday - November 27, 2019

11:03 a.m.

2 **P R O C E E D I N G S**

3 **THE CLERK:** Calling Civil Action 18-1910,
4 Dreamstime.com LLC versus Google LLC.

5 Counsel, please step forward and state your appearances
6 for the record.

7 **MR. PEPPERMAN:** Good morning, Your Honor. Donald
8 Pepperman with Baker Marquart on behalf of plaintiff
9 Dreamstime.

10 **MS. WHITE:** Good morning, Your Honor. Lauren White
11 with Wilson, Sonsini on behalf of defendant Google.

12 **MR. LIDDIARD:** Good morning, Your Honor. Dylan
13 Liddiard on behalf of Google.

14 **MS. GORTON:** Good morning, Your Honor. Kelly Gorton
15 of Davis Wright Tremaine on behalf of non-party Getty Images
16 U.S. Inc.

17 **MR. KRAMER:** Good morning, Your Honor. Andrew Kramer
18 on behalf of Google.

19 **THE COURT:** Okay. Thank you.

20 How can I help this morning?

21 **MR. PEPPERMAN:** Your Honor, we're here on some of
22 plaintiff Dreamstime's discovery disputes. Specifically,
23 three.

24 We are back, asking for copies of the content license and
25 agreements that the Court allowed us to inspect, but not keep a

1 copy.

2 **THE COURT:** Before -- did you make any progress --
3 did you agree to anything in the jury room?

4 **MR. PEPPERMAN:** Some of the document requests we were
5 able to resolve, yes.

6 **THE COURT:** All right. So pick the one you want to
7 start with, that you are still in disagreement on.

8 **MR. PEPPERMAN:** On the copies of the Getty Images
9 licensing contract, and the Shutterstock licensing contract.
10 We believe it's relevant. It's referenced in the complaint.

11 We claim both contracts, evidence of preferential
12 treatment that Google has given to Dreamstime's two main
13 competitors. And we need to have those two contracts to use at
14 depositions to show witnesses and the jury, to explain and show
15 the contents of why there was preferential treatment.

16 **THE COURT:** Have you seen them yet?

17 **MR. PEPPERMAN:** I did see them. And --

18 **THE COURT:** I'm sorry; you did see them?

19 **MR. PEPPERMAN:** I did see them. Two of my
20 partners -- we went and inspected them. We think they're
21 relevant. There's a protective order that we're willing to let
22 them designate it as attorneys' eyes only.

23 And I believe Google counsel has brought them for
24 in-camera review today, so Your Honor can look at them and make
25 a determination.

1 **THE COURT:** How long are they?

2 **MS. WHITE:** Your Honor, we don't have them with us
3 now. We have no objection to Your Honor reviewing them in
4 camera. We object to their admission on relevance grounds.

5 And given the commercially sensitive nature, we don't
6 think that your inspection is necessary. But if you would like
7 to, we can bring them by later today.

8 **THE COURT:** I may not be here much past noon, so that
9 won't do much good today.

10 **MR. PEPPERMAN:** I've referenced --

11 **THE COURT:** You looked at them, didn't you?

12 **MR. PEPPERMAN:** Yes, Your Honor.

13 **THE COURT:** Or your firm did.

14 **MR. PEPPERMAN:** We --

15 **THE COURT:** And explain to me the most sizzling point
16 that you think would be worth using at trial.

17 **MR. PEPPERMAN:** Well, we detailed in the November
18 22nd letter to Your Honor, which is Docket 106, the main
19 highlights. We tried to keep it vague, since there is an
20 attorneys'-eyes-only designation.

21 But it identifies potential witnesses, the dates the
22 contracts were entered into, the renewal provisions, the
23 materials that are covered by the licenses, the pricing terms.
24 Some of the monies were in the millions of dollars.

25 There's cooperation provisions, and there is modification

1 of certain of Google's business practices that resulted as --
2 by reason of the Getty Images contract, in particular.

3 **THE COURT:** Is there anything in there that gives
4 preferential treatment to Getty or Shutterstock?

5 **MR. PEPPERMAN:** Well, it pays them millions of
6 dollars for an image license. That was not something that
7 Dreamstime got.

8 **THE COURT:** No, but I mean preferential in terms of
9 where your company, Dreamstime, falls in -- when someone
10 googles stock images.

11 **MR. PEPPERMAN:** No.

12 **THE COURT:** Is there something in there that governs
13 that?

14 **MR. PEPPERMAN:** Neither of the contracts mention
15 Dreamstime, or some stipulation to give them preferential
16 ranking over Dreamstime.

17 **THE COURT:** Why -- why -- what's wrong with letting
18 them have those two documents?

19 **MS. WHITE:** They're very commercially sensitive,
20 Your Honor. And of course, Dreamstime is a competitor of both
21 Getty and Shutterstock.

22 And we're not suggesting anything about the integrity of
23 the attorneys, but if -- we don't want these documents to be
24 admitted into evidence in this case.

25 And we think that the minimal relevance of the existence

1 of the agreements is not enough to overcome that commercial
2 sensitivity, and the burdens to Google and our business
3 partners, Getty and Shutterstock.

4 **THE COURT:** Well --

5 **MS. WHITE:** And I -- with respect, I think plaintiff
6 just --

7 **THE COURT:** Go ahead.

8 **MS. WHITE:** -- enumerated a number of provisions that
9 exist in any content licensing agreement. The fact that Google
10 is providing money in exchange for the right to license images
11 is not probative of any bad faith or fraudulent intent.

12 If the fact of the existence of the agreement and the fact
13 that Google has entered into these relationships with other
14 parties is something that Dreamstime wants to rely upon as --
15 as apparently giving Google incentive to mistreat Dreamstime,
16 we have no issue stipulating to the existence of the agreements
17 and the partnerships.

18 But the detailed --

19 **THE COURT:** Well, at trial, would you be okay with us
20 saying to the jury that Google refused to turn these over?
21 There is an agreement, but they wouldn't let us see it? And,
22 and therefore, the jury is left to speculate as to what might
23 be in there.

24 **MS. WHITE:** Well, the -- they have --

25 **THE COURT:** That is the truth, isn't it?

1 **MS. WHITE:** They have seen it. And we --

2 **THE COURT:** Yes. And they have given us some reasons
3 why there's some relevance to it.

4 **MS. WHITE:** I don't think we have heard those
5 reasons, Your Honor.

6 **THE COURT:** Well, they identify as witnesses, what's
7 one.

8 **MS. WHITE:** Well, there's no reason why they couldn't
9 have written down the names of the witnesses that those
10 agreements identified.

11 **THE COURT:** I told them not to write down anything.

12 Right? Didn't I say you couldn't write down anything?

13 **MR. PEPPERMAN:** That's correct, Your Honor. We
14 didn't write down anything, we didn't take notes, we didn't
15 take video. We had our arms crossed (Indicating). We looked
16 at them, determined they were highly relevant.

17 We need to have these for witnesses. I can't go to a
18 deposition and say: I've seen the contract; I can't show it to
19 you, but let me ask you about it.

20 The Google witnesses will say: Oh, well, unless I have it
21 in front of me, I can't answer any questions.

22 I have been doing this 35 years. I've never seen an
23 instance where you have a highly relevant document, and I can't
24 get a copy of it. At least for discovery purposes.

25 If there's an issue at trial that they don't want it to

1 come into the evidentiary record, then bring an in limine
2 motion. But we're in discovery. The standard is not that high
3 for discovery.

4 **THE COURT:** But there's nothing in there that helps
5 you on the ranking point. So tell me how it would help you on
6 the substance.

7 **MR. PEPPERMAN:** The fact that they have a content
8 license agree with our two key competitors, they're going to
9 favor them. They're getting money; they're paying them money
10 for these images. We're not getting any money. We don't have
11 any license. So of course they're going to get --

12 **THE COURT:** Well, there's nothing illegal about that.
13 They -- Google has a deal with one of your competitors to --

14 **MR. PEPPERMAN:** It shows the intent --

15 **THE COURT:** Why would that be -- that's not illegal.

16 **MR. PEPPERMAN:** We have a good faith and fair dealing
17 claim, and an unfair competition claim. And we're trying to
18 show a motive for all the dirty tricks that Google has played,
19 and discriminated against Dreamstime.

20 **THE COURT:** What is the dirty trick, again?

21 **MR. PEPPERMAN:** Well, one, drop in the organic search
22 ranking. But I did want to bring that up. It came up at the
23 last hearing on September 9.

24 We served an interrogatory back in March of 2019, No. 1,
25 asking: Give all the reasons why Dreamstime dropped

1 dramatically in the Google search ranking.

2 The last hearing in September, Google counsel said:

3 They're working on it; you'll get an answer.

4 Today I learned for the first time the data is corrupted;
5 they don't know when we're going to get an answer. So we're
6 nine months down the road, and we still don't have an answer to
7 the basic question in the case as to why we're here, why did
8 Dreamstime drop from No. 3 to 90.

9 So I just want to advise the Court of that. We learned
10 that today. So at some point, we might have to bring a motion
11 for preclusion order or another extension, because we can't
12 identify witnesses to depose and go forward without that
13 critical information, which we still don't have.

14 **THE COURT:** Let's put the agreements to one side for
15 a minute.

16 Is that true? About the --

17 **MS. WHITE:** Yes.

18 **THE COURT:** I mean, that's a legitimate question to
19 ask. And you still haven't answered it?

20 Is that correct?

21 **MS. WHITE:** Unfortunately, yes, Your Honor. At the
22 September hearing, we received the data pull shortly after that
23 hearing. And we hoped to produce it shortly thereafter.

24 After the case schedule was extended, we wanted to take
25 time to verify the data to make sure that it was accurate and

1 complete.

2 We unfortunately just learned last week, after -- in the
3 process of trying to finalize it and verify it, that the data
4 is corrupted, and it need to be re-pulled. I understand that
5 that can happen quickly, within the next couple of weeks.

6 There's no reason why that issue should stall the
7 discovery related to ads. The surviving causes of action here
8 are about Dreamstime's ad agreement with Google. And there's
9 no reason why that should stall the issues that we're here to
10 discuss today.

11 If it turns out that --

12 **THE COURT:** Well, it could be that some part of your
13 answer as to why they dropped so far in the rankings would
14 necessitate going back and re-depositing people. Until we see
15 the answers, it's hard to know.

16 **MS. WHITE:** Understood, Your Honor. If that turns
17 out to be the case, we certainly will be reasonable. And if a
18 further extension is necessary, I -- I don't think that's the
19 case at this point. The cutoff for that discovery is not until
20 February.

21 But, we're doing everything we can. We're speaking to the
22 client frequently about this issue. And we hope to have --

23 **THE COURT:** I'm going to give you a deadline of
24 December 4. December 4. And it better be a good answer. If
25 that wrecks your holiday, I'm sorry.

1 Tell your client not to corrupt data. Sounds fishy to me.

2 **MS. WHITE:** Your Honor, Google does not store in its
3 logs where a specific website ranked in respect to a specific
4 search query, over time. Users conduct millions of queries a
5 day, a second. And the process for --

6 **THE COURT:** You've got to answer the question. At
7 trial, you're going to have some answer.

8 **MS. WHITE:** Yes.

9 **THE COURT:** And it would be phony baloney for you to
10 stand there now and give me a long list of excuses as to why
11 you can't do it, and then at trial you suddenly have an answer.
12 No. No.

13 **MS. WHITE:** Your Honor, I'm not trying to explain why
14 I can't do it.

15 **THE COURT:** This is just a hide-the-ball thing that
16 Google is doing.

17 **MS. WHITE:** It's not, Your Honor. The data is
18 enormous, and needs to be recompiled and aggregated to --

19 **THE COURT:** I've had this case for two years, now.
20 You should have had this answer a year ago.

21 **MS. WHITE:** We're doing everything we can to get it
22 quickly. And I -- I understand the December 4th deadline.

23 **THE COURT:** Thank you.

24 I'm still not ruling on these documents yet. What else
25 did you want to bring up?

1 **MR. PEPPERMAN:** Well, that segues into the next
2 discovery dispute. We asked for more than ten depositions.

3 **THE COURT:** All right. Sixteen is a reasonable
4 number.

5 **MR. PEPPERMAN:** Okay.

6 **THE COURT:** I'm just going to rule. Sixteen in this
7 case is reasonable.

8 **MR. PEPPERMAN:** Thank you, Your Honor.

9 **THE COURT:** Any objection?

10 **MS. WHITE:** Well, Your Honor, --

11 **THE COURT:** No.

12 **MS. WHITE:** -- we don't object --

13 **THE COURT:** Look. See, it's just one excuse after
14 another. I'm going to give them 20, if you're -- if you're
15 going to object to 16, I'm going to give them 20. Sixteen is
16 the number.

17 All right. What's your next problem?

18 **MR. PEPPERMAN:** The next brings us into the document
19 request. At the last hearing, Your Honor did not like our
20 lead-ins --

21 **THE COURT:** Yeah, I remember that. So --

22 **MR. PEPPERMAN:** So we went back to the drawing board,
23 redrafted them all to use the magic words --

24 **THE COURT:** Reasonable words. Not magic words. You
25 used bad words before. Now -- all right, give me the one that

1 you think is your best shot.

2 **MR. PEPPERMAN:** We used Your Honor's words of choice,
3 which was "constitute," "summarize" or "describe."

4 **THE COURT:** Yes. Correct.

5 **MR. PEPPERMAN:** And we did that. And we narrowed all
6 the time frames, or we used sufficient to show.

7 **THE COURT:** Give me one that you think is a good one
8 that they have stonewalled you on.

9 **MR. PEPPERMAN:** Well, we're only down to 12. We
10 resolved the rest.

11 **THE COURT:** I'm not going to go through 12 today.
12 I'm going to go through one, two, or three. I don't know how
13 many I'll go through. But give me your best shot, so I can see
14 how reasonable you are.

15 **MR. PEPPERMAN:** Well, okay, let's start with Request
16 No. 58 (sic). And that's found at Exhibit A -- or Exhibit --
17 I'm sorry --

18 **THE COURT:** 58?

19 **MR. PEPPERMAN:** 158, at Exhibit C.

20 **THE COURT:** Oh, 158. All right.

21 Documents sufficient to show the total annual revenues
22 that Google derived from its content licensing partnership with
23 Getty Images in 2018.

24 Okay. Is that it? Is that the one?

25 **MR. PEPPERMAN:** Pretty specific.

1 **THE COURT:** All right. To me that's -- what's wrong
2 with giving them that?

3 **MS. WHITE:** Your Honor, for the same reasons that the
4 contents of the deals, themselves, are minimally relevant, if
5 relevant at all, we think these requests, including No. 158,
6 about peripheral information about the deals is also
7 irrelevant. The --

8 **THE COURT:** Overruled. You're going to have to give
9 them that information.

10 158 is -- look. Until I see the information -- I don't
11 know the case well enough to say that it's absolutely never
12 going to get in at trial. Maybe you're right that it's not
13 going to get in at trial.

14 But this is -- it's going to get -- in two more years, it
15 will be stale information, anyway. It's still current enough
16 that it ought to be protected. But -- no. Produce that one.
17 158 is granted.

18 All right, what's your next one?

19 **MR. PEPPERMAN:** 159, same thing as to the other
20 partnership with Shutterstock.

21 **THE COURT:** I'll give them just for year 2018.
22 Granted as to 2018.

23 All right. What's your next one?

24 **MR. PEPPERMAN:** 160: Documents sufficient to show
25 the total amounts that Google paid to Shutterstock in those two

1 years.

2 **THE COURT:** Well, I need to have a -- why do you need
3 two years? Why isn't one year enough?

4 **MR. PEPPERMAN:** Well, that was the period of the
5 contract. It started in 2017, so we want it during the
6 contract.

7 **THE COURT:** Yes, but why isn't one year enough?

8 **MR. PEPPERMAN:** We'll take 2018, Your Honor.

9 **THE COURT:** All right, 2018.

10 **MS. WHITE:** Your Honor, may I interject, please?

11 **THE COURT:** Yes, go ahead.

12 **MS. WHITE:** When we were here before, Dreamstime had
13 a number of independent document requests about what it
14 described as the scope of Google's relationship with Getty
15 Images and Shutterstock.

16 We contend that the details of those relationships are
17 commercially sensitive, and not probative of Google's supposed
18 fraudulent intent in Google's ad relationship with Dreamstime.
19 That is our position.

20 Notwithstanding that, we agreed to produce several
21 categories of documents, following Your Honor's guidance at the
22 last hearing, including documents that reflect the reasons why
23 Google entered into the deals with Getty and Shutterstock. And
24 documents -- communications between Google and Getty and Google
25 and Shutterstock about Dreamstime. And any documents that show

1 unfair treatment or favoritism as between the companies.

2 There's no reason why this additional -- these additional
3 requests need to be produced here. And, they are commercially
4 sensitive.

5 **THE COURT:** Look, I'm sorry that it's -- I'm not
6 JAMS; I'm not arbitration. I am the United States District
7 Court. And you have been sued in a case where you haven't been
8 able to get it dismissed. You are stonewalling.

9 Overruled. Produce -- I'm going -- produce for 2018 on
10 No. 160. It'll be under the protective order.

11 **MR. PEPPERMAN:** Your Honor, 161, same thing as to
12 Getty for one year, 2018?

13 **THE COURT:** Yes, granted.

14 **MR. PEPPERMAN:** Okay. Moving on to 164. Just:
15 Documents that constitute, summarize or describe the ways
16 Google has used or plans to use the images that it's getting
17 from Getty under the contract.

18 **THE COURT:** I don't know. That sounds enough like
19 what she's already said they will produce. I'm not going to
20 give you 164.

21 **MR. PEPPERMAN:** 165, same, as to Shutterstock.

22 **THE COURT:** No, same thing. Denied.

23 **MR. PEPPERMAN:** Okay. 166: Documents sufficient to
24 show the types and sources of revenue Google obtained from the
25 images licensed from Getty.

1 **THE COURT:** Why is that different from the other ones
2 about the revenue? I don't know; I don't -- I'm missing
3 something.

4 Documents sufficient to show the types and -- no, I don't
5 think you need that. 166 is denied.

6 **MR. PEPPERMAN:** Okay.

7 **THE COURT:** Now, you can ask about that at
8 depositions. I'm not saying you can't ask about it. I'm just
9 saying I'm not going to make them go dig all that out of their
10 records.

11 **MR. PEPPERMAN:** That's great to know that in advance,
12 Your Honor, because I was anticipating a big discovery dispute
13 over blocking of testimony at deposition.

14 **THE COURT:** Well, no, you can ask. At a deposition,
15 somebody might be able to easily answer that.

16 **MR. PEPPERMAN:** Sure.

17 **THE COURT:** To me, the burden is too much to go dig
18 that out of the records.

19 **MR. PEPPERMAN:** Okay.

20 **THE COURT:** So you can ask about it.

21 **MR. PEPPERMAN:** 167, same, as to Shutterstock.

22 **THE COURT:** Same on 165. You can ask about it at a
23 deposition.

24 **MR. PEPPERMAN:** Okay.

25 **THE COURT:** I'm not saying you can't ask. I'm just

1 saying that I'm not going to make them go dig out -- it's too
2 burdensome to go dig out those kind of documents.

3 All right, 167.

4 **MR. PEPPERMAN:** 168: Documents to show any
5 incentives, financial or otherwise, that Google has offered or
6 provided to Getty in 2018.

7 Just sufficient to show what types of incentives were
8 given. Rebates, discounts.

9 **THE COURT:** You can ask about that at a deposition,
10 but I'm not going to make them go dig out those documents.

11 All right, what's next?

12 **MR. PEPPERMAN:** 169, same as to Shutterstock.

13 **THE COURT:** Same thing.

14 **MR. PEPPERMAN:** And we've resolved 174. We've
15 resolved 176.

16 Brings us to 177, is: The documents that constitute,
17 summarize or describe the strategic reasons Google redesigned
18 Google Images in those specific time periods.

19 And Google is claiming it's too burdensome.

20 **MS. WHITE:** Yes, Your Honor. These documents are
21 seven years old. There's been a lot of turnover at Google in
22 that time period. And if these documents still exist -- and we
23 don't know whether they do -- it would require searching
24 through the custodial records of numerous former employees.

25 And we still don't have an articulation of why this

1 information is relevant to their breach-of-contract claim, or
2 alleged --

3 **THE COURT:** All right. I'm going to make you produce
4 only documents that were shown to the board of directors on
5 this subject, that might have occurred. And that would be easy
6 to find.

7 So 177 is mostly denied, but granted as to the board of
8 directors.

9 **MR. PEPPERMAN:** All right, moving on to 178,
10 Your Honor, it's: Documents that constitute, summarize or
11 describe the strategic reasons Google redesigned Google Images
12 in those specified recent time periods, not back in 2012.

13 **THE COURT:** Same thing, but only as to the board of
14 directors. Now, if there's nothing to the board of directors,
15 then there's nothing to produce. But that will be easy to
16 check.

17 Okay, what's next?

18 **MR. PEPPERMAN:** All right, that brings to us the last
19 one, which is 181. We're still back to the European Commission
20 complaint filed by Getty Images, alleging much of the similar
21 conduct we are alleging in this case against Google.

22 We asked Getty Images for it. They're refusing to produce
23 it. Google says: Get it from Getty. Getty says: Get it from
24 Google.

25 **THE COURT:** I think those should be produced. That's

1 a known quantity of documents.

2 Why can't you produce that?

3 **MS. WHITE:** So EU regulations prohibit Google from
4 producing documents that Google did not, itself, produce or
5 receive. Google only was able to access these documents
6 through a special procedure called the "access to file"
7 procedure in the EU. And under the regulations of that
8 procedure, Google is not permitted to use the documents outside
9 the context of that specific proceeding in the EU.

10 And we understand that our European counsel risks being
11 disbarred in the event that we violate those regulations.

12 **MR. PEPPERMAN:** I have a solution, Your Honor.

13 **THE COURT:** Is that true?

14 **MR. PEPPERMAN:** Well, I've tried -- you said I should
15 go try to get them. I went to try to get them. I could not.

16 So --

17 **THE COURT:** Get them from where?

18 **MR. PEPPERMAN:** The EU, directly. You said: It
19 might be too burdensome; go get it yourself. I couldn't get
20 them. We retained European counsel. Google is now saying they
21 can't turn over the Getty documents.

22 Getty's counsel is here today. We've subpoenaed those
23 documents from Getty. They said: Get them from Google.

24 So during the meet-and-confer at which Getty's counsel was
25 present, I said: Well, I'd like to get them today. I have the

1 Court order.

2 And she said: No, you have to bring another motion to
3 compel.

4 So since she's intervened, and is here today, I would ask
5 the Court to order Getty to produce those documents.

6 **THE COURT:** All right. Let's hear from Getty's
7 lawyer.

8 **MS. GORTON:** Your Honor, it just came to Getty's
9 attention yesterday that there were issues with who could
10 produce them. We didn't realize they weren't able to get them.
11 We didn't know the obligations Google was under not to produce
12 them.

13 So we haven't had an opportunity to fully discuss this
14 matter with our client, look at the documents, review them for
15 any potential confidential information, private information,
16 competitively-sensitive information.

17 But it is our position that it's completely irrelevant to
18 the claims by Dreamstime against Google.

19 **THE COURT:** Well, yeah, but if you haven't -- how can
20 you have a position if you haven't even looked at them?

21 **MS. GORTON:** I -- I understand that there are claims
22 that Getty alleged against Google in the European Union
23 Commission. I haven't looked at the documents.

24 But I don't see how our independent claims against Google
25 in the past have anything to do with Dreamstime's current

1 existing claims.

2 **MR. PEPPERMAN:** Your Honor, if I may, at the last
3 hearing on September 9, you said there might be some good
4 nuggets in the complaint and the related documents, since we're
5 alleging basically the same thing as Getty.

6 But we did serve a Rule 45 document subpoena on Getty
7 months ago. And they continue to object. So to make the
8 objections, they must have looked at something.

9 **THE COURT:** Well, did you -- but did you tee this up
10 for today to enforce the subpoena against Getty?

11 **MR. PEPPERMAN:** No, Your Honor, because they said:
12 Go get it from Google. Google's a party; we're a non-party.

13 Now Google says they can't turn it over. We just keep
14 getting the run-around. We've got a cutoff in February. No
15 depositions been taken. It's just a giant logjam.

16 **THE COURT:** You mean you haven't taken any
17 depositions in this case?

18 **MR. PEPPERMAN:** Yeah. We're still -- everyone's
19 still producing documents, still. They served a fourth
20 document request last Friday.

21 **THE COURT:** Who's "they"?

22 **MR. PEPPERMAN:** Google.

23 **THE COURT:** Well, they're entitled to that, too.
24 There's nothing wrong with them serving document requests.

25 But I'm shocked that after two years of this case, you

1 haven't taken any depositions.

2 **MR. PEPPERMAN:** Well, Your Honor just ruled over the
3 summer on the judgment on the pleadings motion. So everything
4 was at a standstill.

5 **THE COURT:** Well, that was the summer. This is now
6 almost the winter.

7 **MR. PEPPERMAN:** I understand.

8 **THE COURT:** All right. Here's what we're going to
9 do.

10 First, does the plaintiff know what rule is being
11 referenced here, that the European Commission would disbar the
12 lawyer for -- if I were to order that they be turned over?
13 That seems bizarre to me.

14 But, is there such a rule?

15 **MR. PEPPERMAN:** Well, Your Honor, let me first start
16 with: Google has agreed to turn over everything they submitted
17 to the EU in connection with the complaint. We're now asking
18 for what Getty submitted. So, I'm happy to get it from Getty.
19 I wouldn't want a Google lawyer to go to jail or get disbarred.

20 But if Getty can do it, I'll take it from Getty. It
21 doesn't matter who I get it from. I can't get it, myself.

22 **THE COURT:** What day next week can we come back on
23 this so Getty will --

24 **THE CLERK:** We're available on Monday. Or Wednesday,
25 late afternoon.

1 **THE COURT:** What time on Wednesday could we do it?

2 **THE CLERK:** It would have to be after 2:00.

3 **THE COURT:** Could we do it right at 2:00?

4 **THE CLERK:** You have your meeting, your lunch --

5 **THE COURT:** Yes. But if I'm back by 2:00, can we do
6 it then?

7 **THE CLERK:** Yes.

8 **THE COURT:** On Wednesday?

9 **THE CLERK:** Yes.

10 **MS. WHITE:** Your Honor, may I make a suggestion just
11 for purposes of further teeing this up?

12 I understand from EU counsel, the investigation that the
13 European Commission conducted into Google took seven years. In
14 connection with that, it received hundreds of thousands of
15 documents from thousands of companies, including Getty.

16 I don't know the number of documents that Getty produced
17 to the EC; I haven't seen them. But I think some limit on --
18 if Your Honor is inclined to go here, this request just says:
19 Documents provided over a one-year period.

20 If that is going to be thousands of documents, I don't
21 think that's reasonable. I think the burden is on plaintiff to
22 identify the specific documents that they're interested in
23 seeing.

24 **THE COURT:** I disagree. This is -- someone made a
25 similar complaint to the EU, and submitted documents. And it's

1 already put together; it's an existing set of material. So I
2 don't -- I don't agree with your complaint.

3 **MR. PEPPERMAN:** And then they settled the case,
4 Your Honor, which is the content license licensing agreement,
5 which is the copy I got to see but can't have a copy of to ask
6 questions about. That's what settled the EU case.

7 **THE COURT:** We're going to come back at 2:00. The
8 only reason I'm making you come back is you want to come back.
9 You're claiming you're not prepared today.

10 Now, if you're prepared today, I am ready to rule.

11 **MS. GORTON:** I'm not fully prepared today. I haven't
12 seen the document, and I haven't had an opportunity to confer
13 with our EU counsel about the matter.

14 I can tell you, our position is that we don't believe that
15 it's relevant. And also, if the Court orders its production,
16 there would be certain terms that would need to be redacted.

17 But again, because I haven't seen the document, I don't
18 know.

19 **THE COURT:** I don't know if I would allow redactions,
20 but maybe.

21 Okay. 2:00 next Wednesday, we'll come back. And this
22 will be directed only at Getty. Google can object if they
23 want, but, but it's the -- Getty is the source of documents.

24 **MR. PEPPERMAN:** Should I submit any papers on behalf
25 of Dreamstime, Your Honor?

1 **THE COURT:** What?

2 **MR. PEPPERMAN:** Should I send you the document

3 subpoena we served on --

4 **THE COURT:** Yes. You ought to tee this up so that
5 I'll see -- if it turns out you had another bogus subpoena that
6 was too broad, then I might just quash it, altogether.

7 But if it's simply the documents provided by Getty to the
8 EU in connection with alleged Google anti-competitive
9 practices, like you have it here, that would be reasonable to
10 me.

11 But if you -- if your subpoena was bogus, then you -- I'm
12 not going to fix it for you.

13 **MR. PEPPERMAN:** I don't draft and serve bogus
14 subpoenas, and I believe it was that narrow. I'll send it to
15 you.

16 **MS. GORTON:** I can pull it up. The subpoena to Getty
17 is not limited to the European Commission. It's any complaints
18 ever made, anywhere.

19 **THE COURT:** Well, see?

20 **MR. PEPPERMAN:** I would have to review it to --

21 **THE COURT:** Then you might be on quicksand instead of
22 solid ground.

23 I tend to enforce the documents as they were -- or not --
24 as they were -- I don't let you fix it up on the fly.

25 Now, see, you have a decent request to Google, but that's

1 not to Getty. Getty is the one -- the Rule 45 subpoena is the
2 thing I'm going to have to enforce.

3 **MR. PEPPERMAN:** I understand, Your Honor. If it was
4 too broad, we will serve a narrow request, with one request,
5 just asking for those documents. But I'm certain it was
6 narrower than that.

7 **THE COURT:** We're going to come back and see where we
8 are on this, on Wednesday at 2:00.

9 **MR. PEPPERMAN:** All right, thank Your Honor. Have a
10 good Thanksgiving.

11 **THE COURT:** No, we've got to go back to those two
12 documents. Two contracts. Submit those to me.

13 How voluminous are they?

14 **MR. PEPPERMAN:** I think, about eight or ten pages.

15 **MS. WHITE:** That's right.

16 **THE COURT:** Please submit those to me by Monday, so
17 that I can read them in camera. And then we'll take it up
18 again on Wednesday of next week.

19 **MS. WHITE:** How would you like to receive the copies?

20 **THE COURT:** Just send them -- don't file them.

21 **MS. WHITE:** Yes.

22 **THE COURT:** Just send them to this nice clerk,
23 Theresa, who will then keep it private and let me look at it.

24 **MS. WHITE:** Okay.

25 **THE COURT:** I won't put it on the court record

1 without letting you know first.

2 **MS. WHITE:** Thank you, Your Honor.

3 **THE COURT:** Is that it?

4 **MR. PEPPERMAN:** Yes, Your Honor. Thank you.

5 **THE COURT:** Happy holidays to both sides.

6 **MR. PEPPERMAN:** Thank you.

7 **MS. WHITE:** And you, too.

8 **MS. GORTON:** Thank you, Your Honor.

9 (Proceedings concluded)

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4 **CERTIFICATE OF REPORTER**

5 I, BELLE BALL, Official Reporter for the United States
6 Court, Northern District of California, hereby certify that the
7 foregoing is a correct transcript from the record of
8 proceedings in the above-entitled matter.

9
10 *Belle Ball*

11 _____
12 Belle Ball, CSR 8785, CRR, RDR

13 Monday, December 2, 2019
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